D.P.U. 93-164

Petition of Boston Edison Company, pursuant to G.L. c. 164, § 94A, for approval by the Department of an agreement for the purchase by the Company of capacity and energy from a combustion turbine owned by the MBTA.

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I. INTRODUCTION

On September 9, 1993, Boston Edison Company ("BECo" or "Company"), pursuant to G.L. c. 164, § 94A, and 220 C.M.R. §§ 10.00 et seq., filed with the Department of Public Utilities ("Department") a contract ("Second Jet Agreement" or "Agreement") between the Company and the Massachusetts Bay Transportation Authority ("MBTA") for the purchase of capacity and energy from a combustion turbine peaking unit ("Second Jet") scheduled to be placed in service by the MBTA in 1994.[1] The contract was docketed as D.P.U. 93-164.

Pursuant to notice duly issued, a procedural conference was held at the Department's offices in Boston on January 5, 1994. The Department received and granted petitions for leave to intervene filed by CMS Generation Company and Montvale Energy Associates, L.P. (collectively "CMS Generation"), the MBTA, Western Massachusetts Electric Company ("WMECo"), and Coalition of Non-Utility Generators, Inc. ("CONUG"). No other petitions for leave to intervene were filed.

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1 The MBTA planned to build the Second Jet in response to a legislative mandate that the MBTA have sufficient generating capacity available to meet emergency needs (Tr. at 6). At a procedural conference held on January 5, 1994, the counsel for the MBTA stated that the Second Jet unit was fully permitted and under construction and was expected to enter service in 1994 (Tr. at 14). This would be the second combustion turbine peaking unit built by the MBTA (September 9, 1993 BECo Letter at 1).

Limited participant status was granted to Cambridge Electric Light Company and Commonwealth Electric Company (collectively, "COM/Energy"). Comments were filed by United Power Systems ("United Power").

The evidentiary record includes the Company's initial filing and its responses to the Department's information requests. In addition, the Company filed both an initial brief and a reply brief. Pursuant to a schedule established by the Department, COM/Energy and CONUG filed initial briefs/comments and CONUG filed reply comments.

II. THE MBTA'S RFP PROCESS

On September 26, 1991, the MBTA issued a request for proposals ("RFP") with respect to supplying part or all of the MBTA's future electric power requirements (IR-DPU-2-2, Att. 1, at 1). In the RFP, the MBTA noted that it was planning to install a second jet turbine with a winter rating of approximately 34 MW in August 1993 and that all, some, or none of this capacity may be included in the MBTA's power supply plans depending on economic and reliability issues (id., Att. 1, at 2). According to the Company, the actual terms of the Second Jet Agreement were negotiated simultaneously with the negotiation of the All Requirements Service Agreement between the MBTA and BECo (IR-DPU-1-1, at 1).

The MBTA requested that bidders provide the following

information: (1) term of offer; (2) type of sale; (3) capacity price offered over term; (4) estimated energy prices over term at full load heat rate; (5) effects of Clean Air Act Amendments on cost over term; and (6) interconnection points, estimated losses, wheeling arrangements, and costs. The MBTA also requested that bidders provide the following information for each generating unit included in an offer: (1) type of capacity (base, intermediate, or peaking); (2) technology;
(3) fuel type; (4) commercial operation date; (5) most recent five years of availability history as compared to NEPOOL target; (6) full load heat rate; and (7) dispatchability constraints.

The MBTA provided bidders with a "Best and Final Offer Form - Second MBTA Peaking Facility" that asked for details regarding offers to purchase capacity and energy from the MBTA's proposed Second Jet unit. Specifically, the MBTA requested that bidders identify the capacity rates and energy rates at which bidders would be willing to purchase power from the Second Jet, transmission provisions, and the term of the proposed purchase.

On October 29, 1991, BECo responded to the RFP by submitting several different offers (IR-DPU-2-2, Att. 2, at 1). BECo's Option A was an "all requirements" power offer to the MBTA (id.). In Option A, the Company offered to supply all electricity requirements of the MBTA. In addition, the Company offered the MBTA the flexibility to reduce its all requirements rate pursuant to BECo's bid by negotiating a capacity and energy credit arrangement involving the 34 MW Second Jet turbine that the MBTA was planning to construct.

Option B was an offer to supply power from specific generating units (id.). Option C was an offer to supply power under a base/intermediate and peaking arrangement (id.). The Company noted in its offer that certain assets of the MBTA and BECo could be of significant value to both the MBTA and the Company and made proposals that could maximize the value of those assets. Specifically, BECo included a proposal to operate and maintain the MBTA's M Street Jet unit ("First Jet")[2] and the proposed Second Jet as two turbines among 19 turbines owned by BECo (id. at 4).

At the procedural conference, the MBTA stated that if BECo had not proposed to purchase energy from the Second Jet, BECo would not have been selected as the winning bidder (Tr. at 13). In its response to a Department information request, the Company also contended that without offering to make this purchase it would not have succeeded with its bid (IR-DPU-1-2). The Company stated that its offer to

[2] The Company has a Department-approved contract with the MBTA for the purchase of energy and capacity from the MBTA's M Street Jet. See Boston Edison Company, D.P.U. 86-197 (1987).

purchase capacity and energy from the Second Jet was a critical element of its bid, especially given the slim margin by which the Company won the RFP process (id.). In support of this conclusion, the Company provided documents from the MBTA that showed BECo's bid had been assigned a score of 400.6 by the MBTA, while its next closest competitor had been assigned a score of 387.3 (IR-DPU-2-1, at 1). The Company contends that this margin of 13.3 points, or 3.3 percent, can be characterized as "slim" (id.).

II. THE PROVISIONS OF THE SECOND JET AGREEMENT

A. Overview

The Second Jet Agreement provides for the purchase by the Company of 33.5 megawatts ("MW") of capacity and energy from a combustion turbine peaking unit that was scheduled to be placed into service by the MBTA at the MBTA's South Boston Power Station in 1994. The term of the Second Jet Agreement is through the year 2019 or the end of the useful life of the unit, whichever is earlier (September 9, 1993 BECo Letter at 2). The Company would receive capacity and energy from the unit as soon as it enters service; however, the Company will pay no capacity charge until February 1, 2003 (id.). Beginning in 2003, a capacity charge will take effect that is based on a capacity rate of $64 per kilowatt ("KW") per year, escalated from January 1994 by an index for inflation (id.). The Company will pay the fuel, operation, and maintenance costs associated with any energy received (id.). In addition, the Second Jet Agreement contains a performance clause that offers an incentive to the MBTA based on the availability of the Second Jet (id.).

B. Description and History of the Second Jet

According to information provided to the Company by the MBTA, the Second Jet is a used Pratt & Whitney FT-4C engine (IR-DPU-3-8). The engine was originally purchased by CADAFE in April 1979 as a spare to be used in their FT-4C-3F Twin PAC installations at the Pedro Cam site in Valencia, Venezuela (IR-DPU-3-7). The maintenance of the engine was performed for CADAFE by Mimarca (IR-DPU-3-9). Records indicate that the engine had experienced a total of 8,202.8 hours of operation as of September 20, 1981 as a 60 Hertz unit (IR-DPU-3-9). After its service in Venezuela, the engine was purchased by Gas Turbine Corporation and shipped to their facility in East Granby, Connecticut. The engine has undergone a "zero hour" overhaul and has had additional environmental controls installed (id.).

C. Detailed Description of Provisions of Agreement

Under the Agreement, the MBTA will deliver power from the unit to BECo's 115 KV system, upon BECo's request, at K Street in South Boston (Agreement at 3). The Agreement provides for the Second Jet to be connected with both the MBTA's load and BECo's system in such a way that power from the unit will either be delivered to the MBTA to reduce the MBTA's load on BECo's system, or be delivered to BECo's K Street Station when the MBTA's load is less than the output of the unit (id.). When BECo requests power from the unit, the output of the unit will be metered and added to power delivered to the MBTA by BECo on the 115 KV service from K Street (id. at 4). The sum will be reduced by any power from the MBTA that is taken by BECo (id.). The remainder will then be charged to the MBTA under the terms and conditions of the All Requirements Service Agreement (id.).

BECo will pay the fuel costs of the Second Jet incurred to supply power to BECo, based on New England Power Exchange ("NEPEX")[3] reporting requirements (id. at 7). BECO will also pay the incremental cost of the MBTA's operation and maintainence of the unit associated with the delivery of power from the MBTA to BECo (id.). These incremental costs will be identified in accordance with NEPEX requirements (id.). These costs will include, but not be limited to, the incremental labor, insurance, overhaul and repair, and maintenance costs incurred to operate the unit as a result of its use by BECo or the New England Power Pool ("NEPOOL") as set forth in the Agreement and the NEPOOL Agreement (id.).

[3] NEPEX is the operational branch of the New England Power Pool.

The capacity rate for the use of the unit will be $0 per KW per year for the period commencing with the in-service date of the unit and ending January 31, 2003 (id. at 8). From February 1, 2003 through the end of the term of the Agreement, the capacity charge to be paid by BECo to the MBTA annually will be based on a 1993/1994 rate of $64 per KW per year, escalated each year on November 1 by the Gross Domestic Product Implicit Price Deflator for the previous calendar year (id.). The resultant capacity rate will be divided by 12, then multiplied by 23,000 KW for each summer month (June through September) and by 33,500 KW for each winter month (October through May) to determine the monthly capacity charge (id. at 9).

In addition, a performance charge will be calculated for all months during the term of the Agreement commencing on the earlier of the in-service date of the unit or May 1, 1994. The performance charge will apply even if a monthly capacity charge equals zero (id.).

According to the Agreement, BECo intends to use the unit to meet load requirements and its NEPOOL capability responsibilities under the NEPOOL Agreement (id. at 7-8). BECo intends to dispatch the unit under NEPEX direction in accordance with the NEPOOL Agreement (id. at 8). The Second Jet is required by the Agreement to undergo periodic capability audits, as defined in the NEPOOL Agreement, to determine the Qualified Capacity of the unit (id. at 11-12). BECo will request that

NEPOOL recognize the Qualified Capacity of the unit in BECo's total capacity for the purpose of determining whether the Company has met its Capability Responsibility to NEPOOL, and the MBTA agrees to comply with all NEPOOL regulations necessary to permit such recognition (id. at 12). If BECo is not permitted by NEPOOL to include the Qualified Capacity of the unit in BECo's total capacity for Capability Responsibility purposes, all future obligations under the Agreement may be terminated at BECo's option (id. at 13).

III. STANDARD OF REVIEW

The Company is subject to the integrated resource management ("IRM") process developed by the Department that establishes a regulatory framework under which investor-owned electric companies plan, solicit, and procure additional demand-side and supply-side resources. 220 C.M.R. §§ 10.00 et seq. These regulations require that electric companies conduct competitive solicitations to meet identified power supply needs. 220 C.M.R. § 10.01(1). However, the Department has recognized that, under certain circumstances, resources may have to be procured outside of a prescribed IRM solicitation process. IRM Rulemaking, D.P.U. 89-239, at 47-48 (1990). The Department determined that, when an electric company seeks approval of resources acquired ouside of the IRM solicitation process, the petitioning electric company will bear the burden of demonstrating (1) that the proposed resource could not have been acquired through the solicitation structure, and (2) that the proposed resource acquisition is in the best interest of ratepayers. Id.[4]

In Western Massachusetts Electric Company, D.P.U. 93-74 (1993), WMECo sought approval of a lease agreement with the City of Springfield relative to the 33 MW Cobble Mountain Hydroelectric Facility that would allow WMECo to use that facility for the generation of electricity. In its Order, the Department noted that a settlement of WMECo's first draft initial IRM filing was approved by the Department on October 16, 1992, while WMECo's prior lease of the facility expired

4 Prior to adoption of the IRM regulations, BECo had acquired capacity and energy from the MBTA's First Jet in Boston Edison Company, D.P.U. 86-197 (1987). In that proceeding, the Department approved the Company's acquisition after applying its standard for review of purchased power agreements in effect at that time: namely, the Department sought to determine (1) whether the proposed agreement was a least-cost option chosen from among the array of supply and demand management options available to the Company; and (2) whether the contract payments were less than the Company's avoided costs over the life of the contract. D.P.U. 86-197 at 3. After noting that the Company did not consider other supply- or demand-side options at the time the MBTA's First Jet unit was selected for a power purchase agreement, the Department found that avoided capacity costs provide a reasonable standard for the review of peaking unit contracts. Id. at 6. After further analysis, the Department found that the First Jet agreement was likely to result in net savings to ratepayers compared to BECo's "do nothing" costs. Id. at 8. The Department also found the agreement attractive because it offered potential gains to system reliability in South Boston and downtown Boston. Id.

on November 11, 1992; the Department concluded that WMECo's purchase could not have taken place within a prescribed IRM solicitation process. Id. at 8. After finding that ratepayer benefits would be realized through economical energy purchases at rates below WMECo's avoided costs, the Department concluded that the Cobble Mountain purchase was in the best interest of ratepayers. Id. at 7.

In accordance with Department precedent and because the Second Jet Agreement was not negotiated within the formal solicitation framework of the Department's IRM process, BECo must demonstrate (1) that the Second Jet could not have been acquired through the IRM solicitation structure, and (2) that the Second Jet Agreement is in the best interests of ratepayers. IRM Rulemaking, D.P.U. 89-239, at 44-48; D.P.U. 93-74; 220 C.M.R. § 10.07(5).

IV. POSITIONS OF THE PARTIES

A. CONUG

CONUG contends that Department precedent and the IRM regulations require "heightened scrutiny" of requests for approval of capacity purchases that arise outside of the IRM process (CONUG Initial Comments at 9). CONUG argues that BECo has failed to carry its burden to demonstrate that the Agreement represents a reliable, least-cost resource, because it has not been tested against other resources, or against least-cost criteria similar to those contained in the

IRM regulations (id.). In addition, CONUG contends that the Agreement poses significant risk to BECo's ratepayers, because it may involve hidden subsidies with respect to the All Requirements Service Agreement and because it represents a purchase of power, which BECo has consistently argued is unneeded (id.). CONUG states that, as part of its recent IRM filing, BECo has indicated a 29 MW capacity surplus in 2004 and a year of need beyond the ten-year planning horizon (id. at 7). According to CONUG, this nullifies BECo's claim of "free capacity," because its year of need comes at least one year after BECo would be required to make capacity payments to the MBTA under the Agreement (id.). Therefore, CONUG concludes that BECo's ratepayers would be paying for what BECo has claimed is unneeded capacity (id.).

In addition, CONUG references the fact that BECo would be obligated by the Agreement to pay performance incentives to the MBTA through the performance clause (id.). CONUG contends that paying for unneeded capacity and ongoing incentives cannot be deemed as clearly beneficial for BECo's ratepayers (id.). CONUG also maintains that, based on the information provided by BECo, there is no way to know whether the purchase of power from the unit would represent reliable electrical service to ratepayers at the lowest cost to society, including environmental externalities (id.). CONUG asserts that there is insufficient information concerning the operating characteristics of the unit to assess its reliability or environmental impact (id.).

Finally, CONUG argues that allowing this acquisition as an exception from the IRM process is unfair to non-utility generators and others in the competitive market that rely on the integrity of the IRM process (id. at 8). CONUG contends that approval of the unit would also threaten the ability of competitive solicitations to secure reliable least-cost resources for BECo and other Massachusetts ratepayers (id.). CONUG argues that the Agreement must be scrutinized beyond the level required by Department precedent and regulations given (1) BECo's refusal to make required purchases from non-utility generators such as Altresco-Lynn[5], while proposing to purchase power from the MBTA without the benefit of a competitive solicitation; (2) BECo's failure to provide sufficient information or reasoning to carry its burden in this case to demonstrate, among other things, clear ratepayer benefits; and (3) BECo's attempt to pass through to ratepayers the cost

[5] BECo has been directed by the Department, pursuant to 220 C.M.R. §§ 8.00 et seq., to enter into a contract with Altresco-Lynn, Inc. for power from a 170 MW gas-fired cogeneration facility to be constructed at the General Electric River Works site in Lynn, Massachusetts. Boston Edison Company, D.P.U. 92-130-B (1994). BECo's appeal of the Department's ruling in D.P.U. 92-130-B is currently pending before the Massachusetts Supreme Judicial Court. On January 11, 1995, the Supreme Judicial Court vacated the December 15, 1993 decision of the Energy Facilities Siting Board that conditionally approved the Altresco-Lynn facility. See Point of Pines Beach Association, Inc. v. Energy Facilities Siting Board, S-6551, January 11, 1995.

of capacity that it has claimed, in other forums, to be unneeded (id.).

CONUG contends that there is no evidence to support BECo's claim that the Agreement is time-sensitive or unique (id.). Regarding BECo's decision to offer to purchase capacity and output from the MBTA's Second Jet in response to the MBTA's solicitation, CONUG asserts that nowhere in the RFP did the MBTA stipulate any requirement relating to a capacity purchase of the Second Jet (CONUG Reply at 2). CONUG states its belief that the application of competitive market forces is critical to the provision of least-cost electricity and that the absence of an open competition in the present case should cause the Department to review the Agreement very closely (id. at 4). CONUG contends that an examination of the Agreement outside of the Company's current IRM proceeding is not required and, in fact, would be duplicative, inefficient, and inappropriate (id. at 9).

CONUG thus maintains that BECo has not met its burden for justifying an exception from Department regulations (CONUG Reply at 1). Therefore, CONUG urges the Department to require that the Agreement be subjected to the rigors of the competitive solicitation process contemplated in IRM (id. at 9-10).

B. COM/Energy

COM/Energy contends that the Agreement is precisely the type of long-term resource acquisition that should occur and be approved outside of the IRM process (COM/Energy Initial Comments at 3). COM/Energy argues that, in consideration of the circumstances that led BECo to acquire the Agreement, the Company's actions must be viewed as reasonable (id. at 3).

In addition, COM/Energy concludes that BECo has demonstrated that the resource acquisition underlying the Agreement would not fit into an IRM solicitation process (id.). COM/Energy states that the MBTA's RFP was outside of the control of BECo, and it is apparent that the MBTA was not influenced by the IRM process (id. at 4). COM/Energy argues that it would be unreasonable and impracticable to attempt to fit this transaction into BECo's IRM process (id.). Accordingly, COM/Energy urges the Department to grant BECo the necessary exception to the requirements of the IRM regulations and approve the Agreement (id.).

C. CMS Generation

CMS Generation argues that the Department, as a matter of policy, should not grant BECo an exception from the Department's IRM regulations at the same time that BECo is attempting to avoid contracting with the winner of BECo's Third Request for Proposals under the Department's QF regulations, 220 C.M.R. §§ 8.00 et seq. (January 3, 1994 Letter at 1). CMS Generation also argues that the Department should not countenance BECo's apparent attempt to pursue resources outside of the Department's IRM requirements (id.). In its petition for leave to intervene, CMS contended that exceptions should be granted to electric companies that are attempting to adhere to the IRM regulations, but face circumstances in which a need for power cannot be satisfied within the bounds of an IRM solicitation process (CMS Petition at 3). CMS argues that exceptions should not be granted to BECo, which is attempting to manipulate the Department's rules so as to avoid the formal solicitation processes (id.).

D. United Power

In its comments, United Power asserts that approval of the Second Jet Agreement would be contrary to every principle of energy planning and policy that the Department and other government agencies in New England have implemented over the past decade (October 21, 1993 Letter at 1-2). United Power argues that the Department should not endorse a power purchase contract when the subject unit is to be built "irrespective" of need (id. at 2).

Further, United Power contends that the performance clause in the Second Jet Agreement essentially ensures that BECo would pay a capacity charge on a regular basis (id.). Regarding the Second Jet, United Power argues that the unit reflects an old, inefficient, and polluting technology that should not be endorsed as the next capacity acquisition in Massachusetts (id.).

E. Company

In its initial brief ("Company Brief"), the Company argues that the Agreement is in the best interests of its customers and should be approved (Company Brief at 1). The Company contends that the Agreement is a unique power purchase arrangement that provides economic benefits to the Company not only in its own right, but also as part of a larger power purchase arrangement that now exists between BECo and the MBTA (id. at 3). BECo argues that the Agreement was developed under a set of unique circumstances (id. at 5). Specifically, the Company contends that it participated in a highly competitive RFP process initiated by the MBTA and that it responded in a fashion that was in the best interests of all of its customers (id.). The Company argues that the Agreement would add value to the MBTA and that it was a factor in the success of the Company's bid (which included the all requirements offer) to the MBTA (id.). The Company also asserts that the Agreement would add value to all of the Company's customers by providing capacity at very low or no cost across the life of the Agreement (id.).

BECo contends that the Agreement would be beneficial to its customers, because the Company would not be required to pay a capacity charge until February 1, 2003 (id. at 5-6). The Company argues that its first year of need is 2004, as presented in its most recent IRM filing; in the event that the Company needs capacity prior to the year 2003, the unit will provide an on-line, readily available resource option (id. at 6). In addition, the Company contends that the Agreement will provide a useful capacity reserve as well as reliability benefits (id. at 6). According to the Company, the unit will be dispatched on an economic basis, i.e., only when NEPOOL determines it is the lowest cost unit available at the time (id. at 6).

Finally, BECo asserts that the IRM process is ill-suited for review of the type of arrangement embodied in the Agreement, for the following reasons: (1) the Agreement arose out of a unique process that was initiated and administered by the MBTA; (2) the Company had no control over the timing of the MBTA's RFP or the negotiation schedule that the MBTA established; (3) the time period across which the MBTA conducted its RFP was too short to permit application of the IRM process, even assuming it could have been applied to the unique circumstances of the MBTA's solicitation and negotiations; (4) if the Company had waited to pursue the Second Jet in its next IRM proceeding, it is likely that the Company would have lost its largest customer (the MBTA); and (5) unlike typical generation projects, the MBTA planned to construct the Second Jet pursuant to a mandate from the Legislature requiring it to maintain a source of back-up power, regardless of the availability of other capacity (id. at 6-7). The

Company argues that it was able to use this fact to negotiate a favorable price for power from the Second Jet unit (id. at 7).

In its reply brief, the Company requested that the Department allow the Agreement to go into effect without approving the capacity charges (which would not begin until 2003) (Reply at 2). According to the Company, there would be no risk to the Department or to the Company's customers as a result of approving the Agreement with this condition, because the risk of recovering capacity charges will be entirely on the Company (id.). Regarding the performance clause, the Company contends that the Department has before it sufficient operational information to determine whether or not this incentive mechanism is reasonable (Reply at 3).

V. ANALYSIS AND FINDINGS

A. Negotiation of the Second Jet Agreement Outside IRM

The record in this proceeding shows that the MBTA issued its electric power supply RFP on September 26, 1991. On October 29, 1991, BECo submitted its bid to the MBTA in response to the MBTA's RFP. On May 1, 1992, BECo submitted its refined bid to the MBTA after the MBTA had indicated that BECo had reached the next round of consideration. The Department notes that BECo did not submit its first draft initial IRM filing until December 2, 1992. See Boston Edison Company, D.P.U. 92-265, at 1 (1993). Therefore, although the Agreement between BECo and the MBTA was not signed until March 17, 1993, the Department finds that the RFP process was initiated prior to BECo's IRM filing and was inconsistent with the timing of BECo's IRM cycle.[6] Accordingly, the Department finds that the Company could not have fit its acquisition of the Second Jet within an IRM proceeding.[7]

Because the timing of the MBTA's RFP process was inconsistent with BECo's IRM cycle, and because the record demonstrates that BECo would not have succeeded in the MBTA's solicitation if it had not included an offer to purchase the capacity and output of the Second Jet,

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6 In addition to the timing differences between the MBTA's RFP process and BECo's IRM cycle, the Department notes that issuance of the MBTA's RFP and submission by BECo of its responses took place during an explicit regulatory transition period for procurement of new resources by electric companies. The Department has previously stated that the transition period from previous regulatory standards to IRM would be measured from the date of issuance of IRM Rulemaking (August 31, 1990), the date that the new IRM regulations were issued (October 12, 1990), and the date of each electric company's first Phase I IRM filing. IRM Rulemaking, at 86. BECo submitted its first draft initial IRM filing on December 2, 1992. See Boston Edison Company, D.P.U. 92-265, at 1 (1993). On March 10, 1993, the parties to that proceeding submitted an offer of settlement to the Department. On April 28, 1993, the Department approved the settlement.

7 See Western Massachusetts Electric Company, D.P.U. 93-74 (1993).

the Department concludes that it was reasonable for BECo to negotiate a contract for the Second Jet with the MBTA while participating in the MBTA's RFP process. With respect to the concerns expressed by CONUG and CMS regarding BECo's decision to include an offer to purchase the capacity and output of the Second Jet in its response to the MBTA's RFP, the Department finds that the MBTA's RFP process did not serve as a subterfuge by which BECo was able to acquire an additional resource outside of the confines of the IRM process; rather, the central purpose of the RFP was to reach an agreement to provide the MBTA with electric power. The Department concludes that BECo's acquisition of the Second Jet was integral to the All Requirements Service Agreement and that BECo was justified, under these circumstances, in negotiating the contract outside the prescribed IRM solicitation process.

B. <u>Benefits and Costs to Ratepayers of the Agreement</u>

In order to determine whether an acquisition is in the best interests of ratepayers, the Department analyzes both the costs and the benefits of the proposed acquisition. One important benefit is Company access to the full capacity of the Second Jet until 2003, if needed, at no capacity cost. A drawback to the Agreement is that the capacity charge begins one year before BECo claims to have a need for power. Regarding this capacity charge, CONUG asserted that any costs incurred by BECo in association with the purchase of capacity and energy from the Second Jet unit before 2004 would be inconsistent with least-cost planning, because BECo projects no need for new resources until then. The Department notes that the Company has stated its intention to petition the Department in 2003 for recovery of the capacity charge, so this issue is not ripe for resolution at this time.

In addition, the record indicates that NEPOOL-related benefits from the Agreement would include a capacity credit, an operating reserve credit, and possible enhancement of NEPOOL savings shares.

The Company also has contended that there would be additional reliability benefits for the downtown Boston area associated with the unit, because the Second Jet is located at the MBTA's South Boston Power Station. The Department cannot afford these assertions of the Company any weight, because the Company did not provide any evidence in support of its reliability assertions. In order to fully assess this factor, the Department would need to weigh the cost of the proposed unit against the incremental reliability benefits that it would provide and determine whether the added reliability is cost-effective.

A disadvantage of committing far in advance of a power need is the likelihood that improvements in technology, changes in price, and other changed conditions could create superior opportunities for power acquisition or generation in the future that are not available at present.

Because the Company has offered to re-petition the Department in 2003 for recovery of the capacity costs that would become due at that time under the Second Jet Agreement, the Department has focused its analysis of the benefits and costs of the Agreement on the period between the commencement of operation of the unit and 2003. During this period, the main benefit to ratepayers is that they would receive the full benefit of the availability of the Second Jet, while incurring no capacity charge to obtain that benefit. The potential benefit of having the Second Jet available at no capacity cost must be weighed against the possibility that BECo will be charged a performance charge by the MBTA when the Second Jet unit becomes operational. The Department concludes that this performance charge should be analyzed as if it were a supplement to the capacity charge; however, as previously noted by the Department, BECo has itself stated that it has no need for capacity until 2003. The Department thus finds that it would not be prudent for ratepayers to support a performance charge for a unit that is not needed, even if the unit is dispatched from time to time on an economic basis by NEPOOL. Accordingly, the Department concludes that BECo has not demonstrated that the Agreement, with the performance clause in effect, is in the best interests of ratepayers.

C. Conclusion

The Department has concluded that BECo was justified in negotiating the Second Jet Agreement outside the prescribed IRM solicitation process, because (1) the MBTA's solicitation took place during the Department-defined IRM transition period, (2) the RFP process was initiated and controlled by the MBTA, and (3) BECo's negotiation of the Second Jet Agreement was part of its strategy to retain its largest customer and integral to its pursuit of the RFP leading to the execution of the All Requirements Service Agreement between the MBTA and BECo.

For purposes of its analysis, the Department has examined the Second Jet Agreement separately from the All Requirements Service Agreement, even though the Department has concluded that the two agreements are closely related, because the Second Jet Agreement was developed as a result of BECo's bid to supply the MBTA with all power requirements. Although BECo has failed to establish that the Second Jet Agreement is in the best interests of ratepayers, based on the information filed by the Company, the Department believes that, in analyzing the All Requirements Service Agreement and the Second Jet Agreement as a package, it is possible that the benefits to ratepayers from the All Requirements Service Agreement may exceed any detriment to ratepayers from the Second Jet Agreement's performance charge during the 1994-2003 period.

In Boston Edison Company, D.P.U. 94-1A, at 2 (1994), the

Company proposed an adjustment treating the MBTA as a wholesale customer rather than a retail customer pursuant to the terms of the All Requirements Service Agreement. After reviewing the Company's proposal, the Department decided that the sudden change in revenue flow was a rate structure matter that would properly be investigated in the context of the Company's next base rate proceeding. Id. at 10. The Department indicated that in that future proceeding, the Company could request recovery of the capacity costs that are allocated to its retail ratepayers as a result of the MBTA's wholesale customer status under the All Requirements Service Agreement. Id. at 10-11. The Department now finds that it would be appropriate to review the reasonableness of the performance clause in the Second Jet Agreement in the context of its review of the Company's request for recovery of capacity costs during its next base rate case.[8]

Accordingly, the Department approves the Second Jet Agreement with the following two limitations. First, as proposed by the Company, there is no pre-approval of the capacity charge that would be incurred under the Second Jet Agreement beginning in 2003. The Company may petition the Department for approval of the capacity charge in 2003.

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8 The calculation of monthly performance charges under the performance clause of the Second Jet Agreement is subject to review by the Department in fuel charge proceedings.

Second, the Company may recover through its fuel charge such performance charges as are required to be paid by the Company under the Second Jet Agreement between the date of commencement of operation of the Second Jet and its next base rate case. In the Company's next base rate case, the Department will review the Second Jet Agreement in the context of the All Requirements Service Agreement to determine whether this package is in the best interests of ratepayers and whether the performance clause is reasonable. All performance charges collected by BECo between the date of commencement of operation of the Second Jet and its next base rate case are thus subject to refund.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the Second Jet Agreement between Boston Edison Company and the Massachusetts Bay Transportation Authority is hereby APPROVED; and it is

FURTHER ORDERED: That Boston Edison Company may not recover from ratepayers capacity charges associated with the Second Jet Agreement until so ordered in a subsequent proceeding; and it is

FURTHER ORDERED: That Boston Edison Company shall collect, subject to refund at the time of its next base rate case, all performance charges required by the Second Jet Agreement through its fuel charge.

By Order of the Department,

Kenneth Gordon, Chairman

Mary Clark Webster,
Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).